IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

WP(C).No. 236 of 2007(C)

PETITIONER:

THE BOARD OF DIRECTORS OF THE
PALLICHAL FARMERS SERVICE CO-OPERATIVE BANK LTD.,
NO.T 677, PALLICHAL, REPRESENTED BY ITS
PRESIDENT.

BY ADV. SRI.D.SOMASUNDARAM

RESPONDENTS:

---

1. JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES, (GENERAL) THIRUVANANTHAPURAM.

2. STATE OF KERALA REPRESENTED BY
SECRETARY TO GOVERNMENT, CO-OPERATION DEPARTMENT,
GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. P.N. SANTHOSH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

W.P.(C). 236/2007

Dated this the 9th day of January, 2007

JUDGMENT

The Board of Directors of the Pallichal Farmers Service Co-operative Bank Ltd No. T 677, is before this Court through this writ petition, challenging Ext.P1 dated 12.12.2006, through which the first respondent directed the Assistant Registrar (General) of Parassala Unit, Thiruvananthapuram, to conduct an enquiry under Section 65 of the Kerala Co-operative Societies Act, 1969, in short 'the Act', and submit a report within three months to him regarding the anomalies that are stated therein.

2. The learned counsel for the writ petitioner submits relying on Section 65 of the Act, that the first respondent shall order an enquiry only on conditions mentioned in (a) to (f) of Section 65 of the Act and shall also follow the procedures contained in Rule 66 of the Kerala Co-operative Societies Rules 1969, in short 'the Rules'.

3. Ext.P1 reveal that an enquiry under Section 65 of the Act had been ordered, basing on a complaint preferred by one of the members of the writ petitioner, bank, before the concerned Minister which had been forwarded to the first respondent, Joint Registrar, basing on which, he initiated action and ordered enquiry, as stated above. Section 65(d) of the Act specify that "an enquiry may be held basing on an application by the majority of the members of the committee or the Society, or by not less than one third of the quorum for the general body meeting, whichever is less". Whereas in the case at hand, only one of the members of the writ petitioner, bank, had made a complaint before the Minister, which had been forwarded to the first respondent.

4. Yet another challenge of the counsel for the writ petitioner is that Rule 66 (1)(c) of the Rules specify that the point or points on which an enquiry is to be made, has to be stated clearly. In Ext.P1, three items are mentioned. But the first item is regarding the

monetary transaction and no specific period for the transaction is stated. The counsel submits that it may even be from the date of inception of the bank to till date. Similarly, the irregularities in the appointments and the granting of the loans are also stated without any period being specified.

5. The counsel further relied on **Paniker Kadavu Con. Co-op, Society v. Registrar and Others (1994 (2) KLJ 582)** that even a request from a higher authority to subordinate authority will tantamount to a positive command. Hence, an endorsement of the Minister for co-operation is to be treated as an order to the Joint Registrar to initiate action under Section 65 of the Act. The counsel, therefore, submits that if he challenges Ext.P1 order and appear before the Government, he may not get justice. The counsel also relied on **Ellakkal Service Co-operative bank v. State of Kerala (1997 (2) KLT 85)** to emphasis the point that the provisions contained in Rule 66 of the Rules are mandatory.

6. I heard the arguments advanced by the learned Senior Government Pleader. I had also gone through Ext.P1 in detail. I am not entering into any discussion on th merit of the matter. Ext.P1 order does not disclose that the Joint Registrar was independently satisfied of the irregularities in the financial transactions , in the appointments and in granting of the loans and, therefore, he initiated a suo motu enquiry. However, it is revealed from Ext.P1 that one of the members of the bank alone had made a complaint to the Minister, basing on which Ext.P1 order had been passed. It further show that there is no application of the mind by the first respondent uninfluenced by the external factors, leading to the passing of an order for conducting an enquiry, regarding the functioning of the writ petitioner, bank, as the requirements under Section 65 of the Act is not seen fully met.

7. In the above facts situation, I set aside Ext.P1 order. However, this judgment will not stand in the way of the first respondent proceeding against the writ

petitioner bank, according to Section 65 of the Act and rule 66 of the Rules basing on the materials which are before him, and if he is fully satisfied that an enquiry is necessitated.

The writ petition is disposed of as above.

J.M.JAMES
JUDGE

mrcs